

AUG 03 2006

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

**CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS**

FOR THE NINTH CIRCUIT

AURELIO MARTINEZ; et al.,

Petitioners,

v.

ALBERTO R. GONZALES, Attorney
General,

Respondent.

No. 04-75600

Agency Nos. A70-041-695
A75-663-222
A78-111-812

MEMORANDUM*

On Petition for Review of an Order of the
Board of Immigration Appeals

Submitted July 24, 2006**

Before: ALARCÓN, HAWKINS, and THOMAS, Circuit Judges.

Aurelio Martinez, his wife, Maria Candelaria Delgado Guterrez, and their son, Orlando Moises Martinez Delgado, natives and citizens of Mexico, petition pro se for review of the Board of Immigration Appeals' ("BIA") order of October

* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

** The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

8, 2004 denying as untimely their motion to reconsider its earlier decision affirming without opinion an immigration judge's ("IJ") denial of cancellation of removal. We deny in part and dismiss in part the petition for review.

A motion to reconsider must be filed no later than 30 days after the final administrative decision. *See* 8 C.F.R. § 1003.2(b)(2). Petitioners filed their motion to reconsider on July 26, 2004, more than two months after the BIA issued its final decision on May 6, 2004. The BIA denied the motion on the sole basis that it was untimely, and Petitioners fail to challenge that determination. They have therefore waived the only issue before the court. *See Martinez-Serrano v. INS*, 94 F.3d 1256, 1259-60 (9th Cir. 1996).

We lack jurisdiction to consider Petitioners' contentions regarding the BIA's underlying order affirming the IJ's decision because Petitioners failed to timely petition this court for review of that decision. *See id.* at 1258.

PETITION FOR REVIEW DENIED in part; DISMISSED in part.